

Appl. No. : 10/714,819
Filed : November 17, 2003

REMARKS

In response to the Office Action mailed December 19, 2006, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the December 19, 2006 Office Action, Claims 16-23 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over: Claims 1-27 of U.S. Patent No. 6,685,706; Claims 1-15 of U.S. Patent No. 6,648,890; Claims 1-5 of U.S. Patent No. 6,511,481; Claims 1-24 of U.S. Patent No. 6,348,053; and Claims 1-6 of U.S. Patent No. 5,893,850. Claims 16-23 were also rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,720,753 issued to Sander et al. (hereinafter "Sander").

Summary of the Amendment

By this amendment, Applicants respond to the Examiner's comments and rejections made in the December 19, 2006 Office Action. Upon entry of the present amendment, Applicants will have amended Claim 16. Further, Applicants will have submitted a terminal disclaimer to overcome the nonstatutory obviousness-type double patenting rejection. Applicants respectfully submit that the present Application is in condition for allowance.

Traversal of Rejection of Obvious-type Double Patenting

Claims 16-23 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over several issued patents. The present application is related to these patents and the present application and the patents are all assigned to Triage Medical, Inc. Therefore, Applicants traverse this rejection and submit a terminal disclaimer herewith for Claims 16-23 to overcome the double patenting rejection in order to expedite processing of the present application. In view of the terminal disclaimer filed herewith, Applicants respectfully submit that the rejection of Claims 16-23 should be withdrawn.

Traversal of Rejection under 35 U.S.C. § 102(e)

In the Office Action, the Examiner rejected Claims 16-23 under 35 U.S.C. § 102(e), as being anticipated by Sander. Applicants respectfully traverse the rejection of Claims 16-23 and submit that Claim 16 is not anticipated by Sander.

The Examiner indicates that Sander discloses a device (Figures 1-12) comprising: an elongate tubular body (100', Figure 7A) having a proximal end (left side) and a distal end (right side), and that the tubular body has an annular ridge retention member (130) and a distal anchor having two axial strips (115', Figure 7A) moveable from an axial orientation to an inclined orientation. Further, the Examiner indicates that Sander also discloses an elongate pin (203', Figure 8 or 200", Figure 10) moveable within the tubular body (100') in a proximal direction relative to the tubular body, and that the pin has radially inwardly ramped retention members (230). As also disclosed in Sander, the pin 200 is pulled proximally by the surgeon "thereby urging flared section 206 through the aperture 204 and between legs 115. The flared section 206 engages the inner surface of legs 115 and forces legs 115 radially outward so that barbs 116 bite into the side walls of pre-drilled hole 303 to hold the rivet firmly in place by increased friction [sic]." See Sander, col. 4, lines 26-47 and Figure 6.

In contrast, Claim 16 recites, *inter alia*, a bone fixation device comprising "an elongate pin axially moveable within the tubular body and coupled to the anchor such that proximal retraction of the pin with respect to the tubular body advances the distal anchor from the axial orientation to the inclined orientation" (emphasis added). As explicitly shown and stated in Sander, the pin 200 is not coupled to the legs 115. See *id.* Further, Sander is devoid of any teaching that the pin can be coupled to the legs.

Applicants respectfully submit that Sander does not anticipate Claim 16. Therefore, Applicants request the Examiner to indicate that Claim 16, as well as Claims 17-23 and 39, which depend from Claim 16, are allowable over the art of record.

New Claims 39-48

Applicants hereby submit new Claims 39-48 for consideration. Claim 39 depends from Claim 16, and should be allowable for at least the reason that it depends from an allowable base claim. Further, independent Claim 40 and Claims 41-48, which depend from Claim 40, have

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been submitted for consideration. Applicants believe that these claims recite features that are not disclosed, taught, or suggested by the cited art. Therefore, Applicants respectfully request that the Examiner indicate allowance of these claims.

CONCLUSION

Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, Applicants respectfully request that the Examiner indicate that Claims 16-23 and 39-48 are now acceptable and that Claims 16-23 and 39-48 are allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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